THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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WRIT PETITION Nos: 18744 of 1997 and 30509 of 1997

Dated 01-09-2005

W.P.No.18744 of 1997

Between:

Smt.Shaheeda Begum. .. **PETITIONER**

AND

The Principal, Army School and another. **.. RESPONDENTS**

W.P.No.30509 of 1997

Between:

Harsh Deo Pandey. .. **PETITIONER**

AND

The Secretary and Principal, Army School and others.

.. RESPONDENTS

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COMMON ORDER:

Termination of the services of the petitioners, without an enquiry being held and without the petitioners being given an opportunity of being heard, is subjected to challenge in this writ petition as being arbitrary, illegal and in violation of Articles 14 and 21 of the Constitution of India. Since the contentions in both the writ petitions, are more or less similar, and the respondents are common, it is appropriate that both the writ petitions are clubbed and heard together and a common order passed.

It would suffice if the facts, in W.P.No.30509 of 1997, are taken note of. Facts, to the extent necessary for this writ petition, are that the petitioner was appointed as a Lower Divisional Clerk, on 17.01.1994, in the Army School at Secunderabad. His services were confirmed on 17.07.1995. One Mrs Helen Daniel joined as the Principal of the Army School in December, 1996/January, 1997 and, according to the petitioner, eversince then she developed an inimical attitude and was on the look out for ways and means to harass him. A few instances where Mrs Helen Daniel is said to have created problems for the petitioners are stated in the affidavit. It is further stated that, on 01.09.1997, the said Principal communicated adverse remarks in the petitioner's confidential reports for the year ending 30th June, 1997, to which the petitioner is said to have made a representation, vide letter dated 03.09.1997. Petitioner was issued show cause on 26.09.1997, which, in effect, was an order of termination from service, informing him that his services would be terminated with effect from 08.12.1997. The petitioner submitted his reply, to the show cause notice dated 26.09.1997, stating that he did not receive any other letter from the respondent prior to the show cause notice. Petitioner sought a personal interview with the Chairman of the Army School, Secunderabad, vide letter dated 07.10.1997, which was granted on 31.10.1997. The petitioner was informed that his services were terminated. Petitioner contends that termination of his services, without being giving an opportunity of showing cause and without assigning reasons, violates his Constitutional Rights, that termination of his services was for extraneous reasons and that his right to life, which includes the right to livelihood, was infringed violating his fundamental rights under Article 21 of the Constitution of India. Reference is made to the judgment of the Supreme Court in **OLGA TELLIS** Vs. **BOMBAY MUNICIPAL CORPORATION** in this regard.

Insofar as the maintainability of the writ petition is concerned, the petitioner, in the affidavit filed in support of the writ petition, states that the Army School,

Secunderabad (A.P) is a wholly owned and controlled Institution of the Indian Army, thus qualifies to be covered under the definition of "Other Authorities" under Article 12 of the Constitution of India and is therefore subject to the writ jurisdiction of this Court.

In the counter affidavit filed, it is stated that the 1st Respondent-Army School is managed by the Army Welfare Educational Society, that the said society is neither a State nor an instrumentality of the State under Article 12 of the Constitution of India and that the petitioner has no right to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India as there is neither violation of statutory rights nor fundamental rights guaranteed under the Constitution of India, much less Articles 14, 16 and 21. Various allegations, made in the affidavit filed in support of the writ petition, are denied in the counter affidavit and several earlier instances of the petitioner's alleged misbehaviors are listed out in the counter affidavit.

An Additional Counter affidavit is filed, on behalf of the 1st respondent, wherein it is specifically stated that all the Army Schools in India are funded from the Army Welfare Fund organized at Army Headquarters, New Delhi, that the Army Welfare fund is totally a private fund of the Army and does not have any contribution from the Government, that the money for the welfare fund is collected from contributions of various units of the Army through Army Personnel and does not receive any contribution either from the Central Government or the State Government, that the contribution is made directly by the officers and Soldiers of the Army, that the Army School at Secunderabad was established in the year 1981, that its initial corpus of Rs.35,00,000/- was granted from the Army Welfare fund alone, subsequently the school is run with fees collected from students and private contributions from the Army units of Secunderabad and Hyderabad and that no funds of either the Central or the State Governments have ever been received or

utilized at any point of time.

In his reply affidavit, the petitioner would submit that even a private body or a Corporation or an aided private school, would fall within the definition of "State if it acts as an agency as such, that the Army School is fully owned by the Army Welfare Educational Society, which in turn is fully owned and controlled by the Indian Army and the Indian Army is fully controlled by the Union of India. Therefore all the functions of the Army School are controlled and governed by officers of the Indian Army in their official capacity and not as private individuals.

This Court, by order in W.P.M.P.No. 35689 of 1997 in W.P.No.30509 of 1997 dated 09.12.1997, stayed the impugned order and held that the petitioner shall continue as L.D. Clerk in the respondent school.

Sri Deepak Bhattacharya, learned Counsel for the respondent, raises a preliminary objection to the maintainability of the writ petition, and would submit that since the respondent is not an instrumentality of the State under Article 12 of the Constitution of India, the writ petition as filed is not maintainable. Captt. K.M.Saxena, learned Counsel for the petitioner, placing reliance on the judgment of the Supreme Court in **BINNY LTD** Vs. **V.SADASIVAN**, would however submit that since the remedy under Article 226 of the Constitution of India is a public law remedy and inasmuch as the petitioner's fundamental right to employment which, according to the learned Counsel, forms part of the fundamental right to life under Article 21 of the Constitution of India, is violated, a writ petition would be maintainable even if it were to be held that the 1st respondent is not an instrumentality of the state under Article 12 of the Constitution of India.

Sri Deepak Bhattacharya, learned counsel for the respondent, relies on the

Division Bench Judgment of the Jammu and Kashmir High Court in **SMT.ASHA KHOSA** Vs. **CHAIRMAN, ARMY PUBLIC SCHOOL, NORTHERN COMMAND**; as confirmed by the Supreme Court, judgment of the Allahabad High Court in **KAMLESH CHANDRA TEWARI** Vs. **UNION OF INDIA,** judgment of the Guwahati High Court in **MISS SUJAYA ROY** Vs. **UNION OF INDIA**, judgment of the Calcutta High Court in "**NATIONAL INSTITUTE OF MANAGEMENT, CALCUTTA** Vs. **UNION OF INDIA**" and the judgment of the Delhi High Court in **LT.COL N.C.RASTOGI'S CASE**, in support of his submission that the 1st respondent-Army School, run by the Army Welfare Educational Society is not a State within the meaning of Article 12 of Constitution of India.

The Constitution Bench of the Supreme Court in "**PRADEEP KUMAR BISWAS** Vs. **INDIAN INSTITUTE OF CHEMICAL BIOLOGY**", after considering several earlier judgments, held that the tests formulated in **AJAY HASIA'S CASE**, are not rigid sets of principles, so that if a body falls within any of them, it must ex hypothesi, be considered to be a State within the meaning of Article 12 of the Constitution of India. The Supreme Court held that the question, in each case, would be as to whether, in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government and that such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory, whether under the statute or otherwise, it would not serve to make the body a State.

Before examining as to whether, in the light of the cumulative facts as gathered in the present case, it has been established that the 1st respondent is functionally, financially and administratively dominated by or under the control of the

Central Government, which control is all pervasive, the other judgments referred to by the learned Counsel for the respondent may be examined.

In **MRS. ASHA KHOSA'S** case, (3 supra) the question which arose for consideration was as to whether the Army Public School, at Uddampur, Jammu & Kashmir, was a "State" within the meaning of Article 12 of the Constitution of India. The Division Bench of the Jammu & Kashmir High Court held thus:-

> "……As we have already pointed out neither the Army Public School in question can be said to be a 'State' within the meaning of Article 12 nor the rules called the Army Welfare Education Society Rules can be said to be statutory in nature. We answer the question holding that these rules are not statutory much less framed in exercise of power under the provisions of the Article 309 of the Constitution of India. Therefore, no reliance can be placed on this Judgment of Ajay Hasia AIR 1981 S.C. 487 in favour of the petitioner. In this connection, Mr.Hali drew our attention to Rule 13 to show that the Corpus comes from the Union of India. We have already pointed out that according to Rules 196 and 197 of the Rules neither the fund is being utilized to run the school invested by the Government of India or by the State Government nor it has been controlled by the government. It has been controlled by the Board of Directors, therefore, Rule 13 cannot be construed in that manner.
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> In view of the foregoing, we answer the question that Army Welfare Education Society is not an instrumentality of the State under Article 12 of the Constitution….."

The Special leave petition preferred, against the aforesaid judgment of the Division Bench of the Jammu and Kashmir High Court, was dismissed by the Apex Court (4 supra).

In **KAMLESH CHANDRA TEWARI'S** case (5 supra), the Allahabad High

Court was called upon to decide as to whether the Army School at Madhura Cantonment was an instrumentality of the State within Article 12 of the Constitution of India. The Allahabad High Court held that the Welfare Association could not be regarded as doing any public duty or having any nexus with the Government nor did it enjoy a monopoly status to carry on education to the Wards of Army Officers within the Cantonment area and was therefore not a State or an instrumentality of the State under Article 12 of the Constitution of India.

In **SUJAYA ROY'S** case (6 supra), the Division Bench of the Guwahati High Court was called upon to decide as to whether the Army School at Narengi at Guwahati, established by the Army Welfare Educational Society, registered under the Societies Registration Act, fell within the meaning of a State under Article 12 of the Constitution of India. The Division Bench of the Guwahati High Court held :-

> "….Thus, the law is now settled by the Apex Court and a Division Bench of this Court that in the absence of statutory requirement the contract of employment cannot ordinarily be enforced against an employer and the remedy is to sue for damages. The exceptions to the aforesaid rule are the case of public servant dismissed from service in contravention of Art. 311 of the Constitution, reinstatement of a dismissed worker under the Industrial Law, a statutory body acting in breach of statutory obligations. In the present case, the petitioners have not made out a case to continue in service. No case is also has been made out that they hold civil posts under the State or the Union and that they have been terminated from service in contravention to Article 311 of the Constitution. These cases are also not the cases of workers under Industrial Law. The AWES or Army School Narengi are also not statutory bodies created by any statute. The cases of the petitioners, therefore, do not fall within the exceptions laid down in the judgment of the Supreme Court in Nandganj Sihori Co Ltd, Raebareli Vs. Badri Nath Dixit. If, therefore, the employer does not want the services of the petitioners any longer the court cannot grant specific enforcement of the contracts of the service between the petitioners and AWES or the Army School, Narengi by quashing the impugned notices terminating their services……"

The judgment of the Jammu and Kashmir High Court, in **ASHA KHOSA'S** case (3 supra), was followed by the Calcutta High Court in **NATIONAL INSTITUTE OF MANAGEMENT'S** case (7 supra) and it was held that no evidence was produced to show that the Welfare Society was founded by the Central Government or the State Government or that Governmental Authorities had any control over the said society and therefore the writ petition filed against the said society was not maintainable.

In **LT. COL.N.C.RASTOGI'S** case (8 supra) the question which arose for consideration, before the Delhi High Court was as to whether the Army Welfare Housing Organization, registered under the Societies Registration Act, was an instrumentality of the State within the meaning of Article 12 of the Constitution of India, and the Delhi High Court held thus:-

> "…….In my opinion, the financial resources of the State are not the funding source of the AWHO. AWHO can neither be regarded as a society discharging a function which is a public function in nature nor it is impregnated with governmental character or tied or entwined with Government. There is no department of Government handling the schemes of building of houses for and on behalf of all citizens or Army Personnel on no profit or no loss basis and thus no occasion to transfer such department to AWHO. There is hardly any plenary control residing in the Government over AWHO except six serving officers of the Adjutant General being ex-officio members of the organization. The general Governmental supervision under Rule 19 does not show "deep and pervasive State control". The cumulative effect of these factors persuades me to hold that AWHO cannot be regarded as an instrumentality or agency of the Government and so an authority within the meaning of the term in Art.226 of the Constitution….."

It is therefore clear from the judgment in **ASHA KHOSA's** case (3 supra)**, KAMLESH CHANDRA TEWARI's** case (5 supra) and **SUJAYA ROY's** case (6 supra) that the Army Public School, run by the Army Welfare Educational Society, is not an instrumentality of the State within the meaning of Article 12 of the Constitution of India.

While the petitioner contends that the Army School, Hyderabad is wholly owned and a controlled Institution of the Indian Army and thus qualifies to be covered under the definition of “Other Authorities” in Article 12 of the Constitution of India, it is stated in the counter affidavit and the additional counter-affidavit, that all Army Schools in India are funded from the Army Welfare fund, a private fund without any contribution from the Government, that the source of money for the welfare fund are through contributions from various units of the Army from Army Personnel and not through contribution either from the Central or the State Governments. The initial corpus of Rs.35,00,000/- for the Army School, Ramakrishnapuram, Secunderabad is said to have been granted from the Army Welfare fund and subsequent thereto the school is being run with the fees collected from students and private contributions received from Army units of Secunderabad and Hyderabad and that no funds of either the Central or the State Governments have ever been utilized or received at any point of time. In his reply affidavit, while admitting that the Army School is wholly owned by the Army Welfare Educational Society, it is however contended by the petitioner, that the society is fully owned and controlled by the Indian Army and that the Indian Army is fully owned and controlled by the Union of India.

The tests laid down by the Supreme Court in **PRADEEP BISWAS** case (9 supra), is that in the light of the established cumulative facts, the body must be financially, functionally and administratively dominated by or under the control of the Government and such control, particular to the body in question, must be all pervasive. The tests prescribed by the Apex Court in **PRADEEP BISWAS** case (9 supra) have not been satisfied in the case on hand. It is clear from the averments in the counter affidavit that the school was initially financed partly by the Army Welfare fund, which in turn is a private contribution of officers of the Army, and its subsequent financial requirements are being met from fees collected from students and from

private contributions. Since it is stated that no funds, either of the Central or the State Government, have been received and utilized by the 1st respondent, it is clear that neither the Central nor the State Governments exercise any financial control or dominance over the 1st respondent school. In the absence of any averment, let alone any evidence in support of the plea, regarding functional and administrative dominance of either the Central or the State Government over the first respondent, it has necessarily to be held that the 1st respondent is not an instrumentality of the State under Article 12 of the Constitution of India.

Captt. K.M.Saxena, learned Counsel for the petitioner, would however submit that even if it were to be held that the 1st respondent is not an instrumentality of the State under Article 12 of the Constitution of India, since the petitioner's right to employment is a part of his fundamental right to life under Article 21 of the Constitution of India, the present writ petition would, nonetheless, be maintainable and that the petitioners were entitled, in the facts and circumstances of the present case, to invoke the public law remedy under Article 226 of the Constitution of India. Learned counsel would submit that not all activities of private bodies are subject to private law and that certain activities of private bodies may be governed by the standards of public law when its functions are subject to duties prescribed by the statute or even in cases where it has a duty to act in public interest. Learned counsel would submit that since the petitioners right to livelihood, which is part of their right to life, under Article 21 of the Constitution of India, has been violated on account of their illegal termination, in violation of the basic rules of natural justice, even if the first respondent is held to be a private body, not falling within the ambit of Article 12 of the Constitution of India, it owes a public duty to ensure that the fundamental rights of a citizen under Article 21 of the Constitution of India are not violated. Learned counsel would place reliance on the judgment in **SADASIVAN's** case (2

supra), wherein the Supreme Court held :

> "……Thus, it can be seen that a writ of mandamus or the remedy under Article 226 is pre-eminently a public law remedy and is not generally available as a remedy against private wrongs. It is used for enforcement of various rights of the public or to compel the public/statutory authorities to discharge their duties and to act within their bounds. It may be used to do justice when there is wrongful exercise of power or a refusal to perform duties. This writ is admirably equipped to serve as a judicial control over administrative actions. This writ could also be issued against any private body or person, specially in view of the words used in Article 226 of the Constitution. However, the scope of mandamus is limited to enforcement of public duty. The scope of mandamus is determined by the nature of the duty to be enforced, rather than the identity of the authority against whom it is sought. If the private body is discharging a public function and the denial of any right is in connection with the public duty imposed on such body, the public law remedy can be enforced. The duty cast on the public body may be either statutory or otherwise and the source of such power is immaterial, but, nevertheless, there must be the public law element in such action. Sometimes, it is difficult to distinguish between public law and private law remedies. According to Halsbury's Laws of England 3rd ed. Vol. 30. page-682, "a public authority is a body not necessarily a county council, municipal corporation or other local authority which has public statutory duties to perform and which perform the duties and carries out its transactions for the benefit of the public and not for private profit." There cannot be any general definition of public authority or public action. The facts of each case decide the point.

> A contract would not become statutory simply because it is for construction of a public utility and it has been awarded by a statutory body. But nevertheless it may be noticed that the Government or Government authority at all levels in increasingly employing contractual techniques to achieve its regulatory aims. It cannot be said that the exercise of those powers are free from the zone of judicial review and that there would be no limits to the exercise of such powers, but it normal circumstances, judicial review principles cannot be used to enforce the contractual obligations. When that contractual power is being used for public purpose, it is certainly amenable to judicial review. The power must be used for lawful purposes and not unreasonably….."

Learned counsel would also place reliance on the judgment in **OLGA TELLIS** case (1 supra), wherein, the Supreme Court held :

> "……. As we have stated while summing up the petitioners' case, the main plank of their argument is that the right to life which is guaranteed by Art. 21 includes the right to livelihood and since, they will be deprived of their livelihood if they are evicted from their slum and pavement dwellings, their eviction is tantamount to deprivation of their life and is hence unconstitutional. For purposes of argument, we will assume the factual correctness of the premise that if the petitioners are evicted from their dwellings, they will be deprived of their livelihood. Upon that assumption, the question which we have to consider is whether the right to life includes the right to livelihood. We see only one answer to that question, namely, that it does. The sweep of the right to life conferred by Art. 21 is wide and far-reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life. Deprive a person of his right to livelihood and you shall have deprived him of his life. Indeed, that explains the massive migration of the rural population to big cities. They migrate because they have no means of livelihood in the villages. The motive force which propels their desertion of their hearths and homes in the village is the struggle for survival, that is, the struggle for life. So unimpeachable is the evidence of the nexus between life and the means of livelihood. They have to eat to live : Only a handful can afford the luxury of living to eat. That they can do, namely, eat, only if they have the means of livelihood. That is the context in which it was said by Douglas J. in Baksey, (1954) 347 M.D. 442 that the right

to work is the most precious liberty that man possesses. It is the most precious liberty because, it sustains and enables a man to live and the right to life is a precious freedom. "Life", as observed by Field, J. in Munn v. Illinois, (1877) 94 US 113, means something more than mere animal existence and the inhibition against the deprivation of life extends to all those limits and faculties by which life is enjoyed. This observation was quoted with approval by this Court in Kharak Singh v. State of U.P., (1964) 1 SCR 332: (AIR 1963 SC 1295).

Article 39(a) of the Constitution, which is a Directive Principle of State Policy, provides that the State shall, in particular, direct its policy towards securing that the citizens, men and women equally, have the right to an adequate means of livelihood. Art. 41, which is another Directive Principle, provides, inter alia, that the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work in cases of unemployment and of undeserved want. Article 37 provides that the Directive Principles, though not enforceable by any Court, are nevertheless fundamental in the governance of the country. The Principles contained in Arts. 39(a) and 41 must be regarded as equally fundamental in the understanding and interpretation of the meaning and content of fundamental rights. If there is an obligation upon the State to secure to the citizens an adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the content of the right to life. The State may not, by affirmative action, be compellable to provide adequate means of livelihood or work to the citizens. But, any person, who is deprived of his right to livelihood except according to just and fair procedure established by law, can challenge the deprivation as offending the right, to life conferred by Art. 21……."

While it is no doubt true that the right to livelihood is now held to be a part of the right to life, it has not, as yet, been held as bringing within its fold the right to compel the State to provide employment. Accepting the contentions of the learned counsel would require a writ petition being entertained in every case of termination of service of an employee even if such termination is effected by a private employer.

Action of the Municipal Corporation in seeking to evict pavement dwellers was in

issue in **OLGA TELLIS** case (1 supra). This right to live or dwell on pavements was held as not applicable to hawkers carrying on trade or business on pavements, in **SODHAN SINGH** v. **NEW DELHI MUNICIPAL COMMITTEE**, and it was held that the right to carry on any trade or business and the concept of life and liberty within Article 21 were too remote to be connected together. This principle was reiterated by the Apex Court in **SODHAN SINGH III** v. **NMDC** and this court in "**Jubilee Hills Labour Welfare Association** v. **MCH, Khairatabad**".

The distinction between "Public Law" and "Private Law" was explained in "**SRI KONASEEMA CO-OPERATIVE CENTRAL BANK LIMITED** v. **N.SEETHARAMA RAJU**", wherein the Full Bench of this court held:-

> "…….. Distinction between 'public law' and 'private law'.
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> Difficult as this distinction is and incapable of precise demarcation, it is yet necessary to keep the broad distinction in mind. Lord Denning in his book "The Closing Chapter" has this to say on the subject:
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> "The first thing to notice is that public law is confined to 'public authorities'. What are 'public authorities'? There is only one avenue of Approach. It is by asking, in the words of Section 31(2)(b) of the Supreme Court Act 1981 : What is the 'nature of the persons and bodies against whom relief may be granted by such orders', that is, by mandamus, prohibition or certiorari?
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> These are divided into two main categories:
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> First, the persons or bodies who have legal authority to determine questions affecting the common law or statutory rights or obligations of other persons as individuals. That is the formula stated by Lord Justice Atkin in R. v. Electricity Commissioners, ex parte London Electricity Joint Committee Co., (1920) Ltd, (1924) 1 KB 171/205 as broadened by Lord Diplock in O'Reilly v. Mackman (1982) 3, WLR 1096/1104).
>
> Second, the persons or bodies who are entrusted by Parliament with functions, powers and duties which involve the making of decisions of a public nature……. To which I would add the words of Lord Goddard, C.J. in R. v. National Joint Council for Dental Technicians, ex parte Neate (1953) 1 QB 704/707):

“The bodies to which in modern times the remedies of these prerogative writs have been applied have all been statutory bodies on whom Parliament has conferred statutory powers and duties which, when exercised, may lead to the detriment of subjects who may have to submit to their jurisdiction”.

But those categories are not exhaustive. The courts can extend them to any other person or body of a public nature exercising public duties which it is desirable to control by the remedy of judicial review.

There are many cases which give guidance, but I will just give some illustrations.

Every body which is created by statute and whose powers and duties are defined by statute is a ‘public authority’. So Government departments, local authorities, police authorities, and statutory undertakings and corporations, are all ‘public authorities’. So are members of a statutory tribunal or inquiry, and the board of visitors of a prison. The Criminal Injuries Compensation Board is a public authority. So also, I suggest, is a university incorporated by Royal character; and the managers of a State School. So is the Boundary Commission : and the Committee of Lloyd’s.

But a limited liability company incorporated under the Companies Act is not a ‘public authority’; (see Tozer v. National Greyhound Racing Club Ltd. (1983) Times, 16 May). Nor is an unincorporated association like the Jockey Club…….

…….. Applying the above test, the appellant-Society herein cannot be called a public body. It has no duty towards public. Its duty is towards its members only. It has no power to take any action, or pass any order affecting the rights of the members of public. The binding nature of its orders and actions is confined to its members, and to its employees. It is neither a statutory body nor are its relations with its employees governed by a statute. Its functions are also not akin to governmental functions. Nor is it a case where it can be said that the reality behind the Society is the executive power of the State. Moreover, even if for some distant reason it can be characterized as a public body, even so the contract of service between it and the writ petitioner cannot be treated as belonging to ‘public law’ field. It is a pure and simple contract of service, and there is no statutory provision regulating, circumscribing, and governing the said relationship …….”

It is thus clear that a contract of service between a private employer and his employee, in the absence of any statutory provision regulating, circumscribing, and governing the said relationship, cannot be treated as belonging to the "Public Law" field.

In **SADASIVAN's** case (2 supra), while holding that a Writ of Mandamus would lie for enforcement of a statutory right and that the remedy under Article 226 of the Constitution of India, which is a public law remedy, is not available as a remedy against private law, the Supreme Court held :

> "……. The decision of the employer in these two cases to terminate the services of their employees cannot be said to have any element of public policy. Their cases were purely governed by the contract of employment entered into between the employees and the employer. It is not appropriate to construe those contracts as opposed to the principles of public policy and thus void and illegal under Section 23 of the Contract Act. In contractual matters even in respect of public bodies, the principles of judicial review have got limited application. This was expressly stated by this Court in State of U.P. Vs. Bridge & Roof Co., (1996) 6 SCC 22 and also in Kerala State Electricity Board Vs. Kurien E.Kalathil (2000) 6 SCC 295. In the latter case, this Court reiterated that the interpretation and implementation of a clause in a contract cannot be the subject matter of a writ petition. Whether the contract envisages actual payment or not is a question of construction of contract. If a term of a contract is violated, ordinarily, the remedy is not a writ petition under Article 226.
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> Applying these principles, it can very well be said that a writ of mandamus can be issued against a private body which is not a State within the meaning of Article 12 of the Constitution and such body is amenable to the jurisdiction under Article 26 of the Constitution and the High Court under Article 226 of the Constitution can exercise judicial review of the action challenged by a party. But there must be a public law element and it cannot be exercised to enforce purely private contracts entered into between the parties.
>
> We are unable to perceive any public element in the termination of the employees by the appellant in Civil Appeal No.1976 of 1998 and the remedy available to the respondents is to seek redressal of their grievance in civil law or under the labour law enactments especially in

> view of the disputed questions involved as regards the status of employees and other matter. So also, in the civil appeal arising out of SLP (Civil) No.6016 of 2002, the writ petition has been rightly dismissed by the High Court. We see no merit in the contention advanced by the appellant therein. The High Court rightly held that there is no public law element and the remedy open to the appellant is to seek appropriate relief other than judicial review of the action taken by the respondent company……"

Termination of services of employees, under a contract of employment, is not in the realm of public law, and would not enable the employees, whose services have been terminated by an employer, (not falling within the ambit of Article 12 of the Constitution of India), to invoke the extraordinary jurisdiction of this court under Article 226 of the Constitution of India except in cases where the private employer has acted in violation of a statutory provision or has failed to discharge his statutory obligations. It is not the case of the petitioners herein that the first respondent, in terminating their services, has violated any of their statutory rights.

On being pointed out that both the petitioners are continuing in service for more than eight years pursuant to the interim orders passed by this court and their contention that their services were terminated at the mere whim of the then Principal, (whose services were itself terminated subsequently by the first respondent), may not be without substance, Sri Deepak Bhattacharjee, learned counsel for the respondents, on instructions, would fairly submit that the respondents would re-examine the matter and take an appropriate decision in this regard. Learned counsel would submit that insofar as Sri Harsh Deo Pandey, the petitioner in W.P.No.30509 of 1997, is concerned, he had subsequently indulged in other acts of mis-conduct resulting in his again being terminated from service and that he no longer continues in the services of the first respondent. Learned counsel would further submit, on instructions, that insofar as Mrs.Shaheeda Begum, the petitioner in W.P.No.18744 of

1997, is concerned, as she has been continuing in service for the past eight years, by virtue of the interim orders of this court, she shall be continued till a decision is taken by the 1st respondent, on re-examining the entire matter.

Recording this fair concession made, on instructions, by Sri Deepak Bhattacharya, learned counsel for the respondents, both the writ petitions are dismissed as not maintainable. No order as to costs.

RAMESH RANGANATHAN, J

Date: 01-09-2005

Prv